

SUBJECT: <b>Confidential Informants</b>	NUMBER: 2-29.01
EFFECTIVE DATE:	REVIEW DATE:
NMMLEPSC STANDARDS: OPR.02.06	APPROVED: Sheriff

## I. **POLICY**

It is the policy of this law enforcement agency to take necessary precautions by developing sound informant control procedures. In many instances, a successful investigation cannot be conducted without the use of confidential informants. While the use of confidential informants can be an effective tool in investigations, it can be undermined by misconduct of the confidential informants or improper handling by the detective using the informant.

## II. **DEFINITIONS**

**Confidential informant:** An individual who, in an arrangement with law enforcement authorities, agrees to serve in a clandestine capacity to gather information for those authorities on suspected criminal activity or known criminal operatives in exchange for compensation or consideration.

**Confidential informant file:** File maintained in order to document all information that pertains to confidential informants.

**Compelling public interest:** For purposes of this policy, situations in which failure to act would result or likely result in loss of life, serious injury, or have some serious negative consequence for persons, property, or public safety and therefore demand action.

## III. **PROCEDURES**

### A. Establishment of an informant file system

1. The detective shall be responsible for developing and creating a confidential informant file. That file will be approved by a supervisor and placed for safe keeping and maintenance in the confidential informant file cabinet. Once approved the confidential informant will be assigned a number which will be given to the detective.
2. A file shall be maintained on each confidential informant deemed suitable by the department. Each file shall be coded with an assigned informant control number for identification within the indexing system and shall include the following information:
  - a. Name, aliases, and date of birth
  - b. Height, weight, hair color, eye color, race, sex, scars, tattoos, or other distinguishing features

- c. Name of detective initiating use of the informant and any subsequent detective
  - d. Criminal history record
  - e. Current home address and telephone number(s)
  - f. Current employer, position, address, and telephone number
  - g. Vehicles owned and their registration numbers
  - h. Gang affiliations
    - i. Briefs of information provided by the confidential informant and their subsequent reliability
    - j. Picture of informant
    - k. Fingerprints
    - l. Confidential informant contract/agreement
3. Informant files shall be maintained in a separate and secured area in the criminal investigations section.

#### B. Confidential informant determination

- 1. The detective supervisor or other authorized personnel will review for potential selection as a confidential informant. This shall include sufficient detail regarding the risks and benefits of using the individual so that a sound determination can be made. The following information shall be addressed.
  - a. Age, sex, and residency status
  - b. Employment status or occupation
  - c. Affiliation with legitimate businesses and illegal or suspicious enterprises
  - d. Extent to which potential information, associations, or other assistance could benefit a present or future investigation
  - e. Extent to which provided information can be corroborated
  - f. Criminal history, to include whether he or she is the subject of a pending investigation, is under arrest, or has been charged
  - g. Whether he or she is reasonably believed to pose a risk to the public, or is a flight risk
  - h. Whether he or she is a substance abuser
  - i. Whether he or she is related to anyone in law enforcement
  - j. Any prior or current service as a confidential informant with this or another law enforcement organization
  - k. Probation or parole status
  - l. No homicide or sex offender convictions
- 2. Juveniles - Use of a juvenile under the age of 18 as a confidential informant may only be undertaken with the advance approval of the Sheriff or his designee, and with the written authorization of the individual's parents or guardians. Authorization for such use should be granted only when a compelling public interest can be demonstrated.
- 3. Each confidential informant's suitability shall be reviewed annually (at a minimum). If they are no longer needed a memo will be placed in the file deactivating the informant and the file.

4. Any information that may negatively affect a confidential informant's suitability during the course of his or her use shall be forwarded to the detective supervisor or other authorized personnel for information and appropriate action as soon as possible.
5. Confidential informant contracts shall be terminated and the confidential informant file placed in inactive status when the confidential informant has not been used for one year or more.

C. Confidential informant files

1. The detective supervisor in charge of informant files shall ensure that information concerning informants is strictly controlled and distributed only to deputies/detectives and other authorities who have a need and a right to such information.
2. Sworn personnel may review an individual's informant file only upon the approval of the Sheriff or his designee. The requesting personnel shall submit a request explaining the need for review. Personnel shall not remove copy or disseminate information from the file; all informant files shall be reviewed only in designated areas of the department and returned as soon as possible to their secure file location.
3. The name of a confidential informant shall not be included in an affidavit for warrant unless judicial authority is obtained to seal the document from public record or the confidential informant is a subject of the investigation upon which the affidavit is based. Additionally, detectives shall scrupulously avoid providing details of confidential informant actions or involvement in arrest reports and other documents available to the public.
4. No portion of a confidential informant's file shall be entered into any other electronic or related database without controls sufficient to exclude access to all but authorized personnel with a need and a right to know.
5. Detective are responsible for ensuring that information of potential value to other elements of the department is provided promptly to authorized supervisory personnel
6. Employees leaving employment with the department have a continuing obligation to maintain as confidential the identity of any confidential informant and the information he or she provided unless obligated to reveal such identity or information by law or court order.
7. Confidential informant files will be maintained for 3 years from the date of deactivating. After 3 years the confidential informant files will be destroyed.

D. General guidelines for handling confidential informants

1. Confidential informants are assets of the department, not the individual detective.

2. Confidential informants shall not be used without authorization of the department through procedures identified in this policy.
3. Confidential informants shall not be used to gather information on individuals who are not otherwise under investigation or suspicion of criminal conduct. This will not restrict the detective from gaining information on unknown criminal conduct.
4. Confidential informants shall not be used for gathering information purely of a political nature or for other information-gathering efforts that are not connected with a criminal investigation.
5. All confidential informants shall agree and abide by the provisions of the departmental informant agreement. The primary detective handling the confidential informant shall discuss each of the provisions of the agreement with the confidential informant, with particular emphasis on the following:
  - a. Informants are not law enforcement officers. They have no arrest powers, are not permitted to conduct searches and seizures, and may not carry a weapon.
  - b. Informants will be arrested if found engaging in any illegal activity. They will receive no special legal considerations.
  - c. Informants are prohibited from engaging in actions or activities that could be deemed entrapment. The meaning of the term and implications of such actions shall be explained to each confidential informant. For instance, confidential informants shall not participate in actions that encourage, persuade, or otherwise motivate a person to engage in criminal activity.
  - d. Every reasonable effort will be taken to ensure the confidentiality of the informant but, upon judicial order, he or she may be required to testify in open court.
  - e. Informants may be directed to wear a listening and recording device.
  - f. Informants may be required to submit to a search before and after a controlled purchase.
6. Detective shall take the utmost care to avoid conveying any confidential investigative information to a confidential informant (such as the identity of other informants, surveillance activities, or search warrants) other than what is necessary and appropriate for operational purposes.
7. No member of this agency shall knowingly maintain a social relationship with confidential informants, or otherwise become personally involved with confidential informants beyond actions required in the performance of duty. Members of this agency shall not solicit, accept gratuities from, or engage in any private business transaction with a confidential informant.
8. Meetings with confidential informants shall be conducted in private and with another detective present. Meetings with confidential informants shall be documented and subsequently entered into the confidential informants file.

9. When reasonably possible, detectives shall corroborate information provided by a confidential informant and document efforts to do so in the informant or case file.

E. Monetary payments

1. All fees and rewards paid to confidential informants shall be commensurate with the value of the information or assistance provided the department.
2. All confidential informant payments shall be approved in advance by the detective supervisor in charge of confidential funds.
3. Two deputies shall be present when making payments or providing funds to confidential informants.
4. The detective supervisor shall ensure that the process for authorization, disbursement, and documentation of confidential informant payments, as well as the accounting and reconciliation of confidential funds is consistent with this department's policy.
5. Field deputies needing to work with confidential informants will work with the detective supervisor to have a detective assigned to the confidential informant to ensure that proper procedures are followed.